

THIRD DIVISION

[G.R. No. 142013, October 15, 2002]

BIÑAN STEEL CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, MYLENE C. GARCIA AND MYLA C. GARCIA, RESPONDENTS.

[G.R. NO. 148430. OCTOBER 15, 2002]

MYLENE C. GARCIA AND MYLA C. GARCIA, PETITIONERS, VS. HON. ENRICO A. LANZANAS, PRESIDING JUDGE, RTC, BRANCH 7, MANILA AND RUFO J. BERNARDO, SHERIFF-IN-CHARGE, FOR THE EX-OFFICIO SHERIFF OF MANILA, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Before us are two consolidated petitions: (1) G.R. No. 142013, a special civil action for certiorari and mandamus seeking to annul and set aside the Resolutions^[1] of the Court of Appeals dated October 21, 1999 and January 31, 2000, denying petitioner Biñan Steel Corporation's motion for intervention and motion for reconsideration, and (2) G.R. No. 148430, seeking to set aside the decision^[2] and resolution of the Court of Appeals dated February 10, 2000 and May 31, 2001, respectively, dismissing the petition of petitioners Mylene C. Garcia and Myla C. Garcia for violating the rules on forum-shopping.

Stripped of the non-essentials, the facts of the case are as follows:

On July 22, 1998, Biñan Steel Corporation (BSC) filed with the Regional Trial Court of Manila a complaint against Joenas Metal Corporation and spouses Ng Ley Huat and Leticia Dy Ng (the spouses Ng) for collection of a sum of money with damages, docketed as Civil Case No. 98-89831.

On July 24, 1998, the trial court^[3] issued a Writ of Preliminary Attachment after BSC filed an attachment bond. Pursuant thereto, on July 27, 1998, the sheriff of Branch 7 of the RTC of Manila, Manuelito P. Vilorio, levied on the property registered in the names of the spouses Ng and covered by TCT No. 11387 of the Registry of Deeds of Quezon City. This property under preliminary attachment was in fact mortgaged to the Far East Bank and Trust Company (FEBTC), now Bank of the Philippine Islands (BPI), and consisted of a 268-square-meter lot located at 14 Tulip Road, Gardenville Town and Country Homes, Congressional Avenue, Project 8, Quezon City.

On August 5, 1998, a sheriff's return was filed by Vilorio, stating that, as of that date, summons was not served upon the defendant spouses Ng because they could not be located. BSC caused the filing of a motion to serve the summons by publication which was granted. Summons by publication thereafter ensued.

In the meantime, defendant-spouses Ng sold the property to petitioners (in G.R. No. 148430) Mylene and Myla Garcia by means of a deed of sale dated June 29, 1998. Said transaction was registered only about a month-and-a-half later, on August 12, 1998, after the mortgagee FEBTC gave its approval to the sale. On August 19, 1998, TCT No. 11387 in the name of the spouses Ng was cancelled and, in lieu thereof, TCT No. 194226 in the names of Mylene and Myla Garcia was issued. *The annotation of the preliminary attachment made earlier on July 27, 1998 by sheriff Vilorio on the old title, TCT No. 11387, was transferred to TCT No. 194226.*

On August 28, 1998, the Garcias filed a complaint-in-intervention in Civil Case No. 98-89831 pending at Branch 7 of the Manila RTC, alleging that they were the registered owners of the property covered by TCT No. 194226 which was the subject of BSC's writ of preliminary attachment. Said complaint-in-intervention was denied by the trial court for lack of merit.

On April 14, 1999, the trial court rendered judgment by default in favor of BSC, the dispositive portion of which was:

WHEREFORE, decision is hereby rendered in favor of plaintiff Biñan Steel Corporation, and against defendants Joenas Metal Corporation, Ng Ley Huat and Leticia Dy Ng, ordering the latter to jointly and severally:

1. pay the plaintiff the amount of FIVE MILLION EIGHT HUNDRED FIFTY SIX THOUSAND PESOS (P5,856,000.00) as actual damages;
2. pay the plaintiff the amount of ONE MILLION PESOS (P1,000,000.00) as and for consequential damages;
3. pay the plaintiff the amount equivalent to 25% of the total amount due the plaintiff from the defendant as and for attorney's fees; and
4. to pay the costs of suit.

SO ORDERED.^[4]

On June 14, 1999, a Notice of Sale of Execution on Real Property was issued by respondent sheriff Rufo J. Bernardo. It scheduled the public auction of the property on July 7, 1999.

Meanwhile, on February 18, 1999, in view of the dismissal of their complaint-in-intervention, the Garcias filed an action against BSC, sheriff Manuelito P. Vilorio, the Register of Deeds of Quezon City and FEBTC (now BPI) for cancellation of the notice of levy annotated on TCT No. 194226 before Branch 98 of the Regional Trial Court of Quezon City,^[5] docketed as Civil Case No. 99-36804. The Garcias claimed that they were the registered owners of the property in dispute, having acquired the same on June 29, 1998 by means of a deed of sale with assumption of mortgage from spouses Ng Ley Huat and Leticia Dy Ng.

In said case in the Quezon City RTC, the Garcias were able to secure a temporary restraining order enjoining sheriff Rufo J. Bernardo or any person acting in his behalf from continuing with the public auction sale of the subject property initially scheduled on July 7, 1999. This TRO was disregarded by the Manila RTC.

Acting on the ex-parte manifestation with motion to proceed with the execution sale filed by BSC, Judge Enrico Lanzanas of Branch 7, RTC, Manila affirmed, on July 8,

1999, his previous order and directed the public auction of the attached property, unless otherwise enjoined by the Court of Appeals or this Court. Thereafter, the public auction was rescheduled from July 7, 1999 to August 6, 1999.

On August 4, 1999, the Garcias filed another case with the Court of Appeals for the issuance of a writ of preliminary injunction with prayer for temporary restraining order which sought to perpetually enjoin Judge Lanzanas and sheriff Bernardo from proceeding with the public auction on August 6, 1999. Their petition did not implead BSC as private respondent.

In a resolution dated August 5, 1999, the Third Division of the Court of Appeals^[6] temporarily restrained public respondents Judge Lanzanas and Bernardo from proceeding with the public auction of the subject property. Hence, the scheduled public sale on August 6, 1999 did not transpire. This prompted petitioner BSC to file a motion for intervention on August 16, 1999, praying that it be allowed to intervene and be heard in the case as private respondent, and to comment and oppose the petition filed by the Garcias. Likewise, said motion sought to oppose the prayer for preliminary injunction with urgent request for the issuance of the temporary restraining order.

On October 21, 1999, the First Division of the Court of Appeals, in its resolution,^[7] denied BSC's motion for intervention on the ground that its rights could be protected in a separate proceeding, particularly in the cancellation case filed by the Garcias. BSC's motion for reconsideration was likewise denied on January 31, 2000. Thus, on March 13, 2000, BSC filed with this Court a special civil action for certiorari and mandamus, docketed as G.R. No. 142013, seeking to annul and set aside the Resolutions of the Court of Appeals dated October 21, 1999 and January 31, 2000. BSC is invoking the following issues:

I

THE RESPONDENT HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR INTERVENTION FOR BEING IMPROPER AS INTERVENOR'S RIGHTS MAY BE PROTECTED IN A SEPARATE PROCEEDING IN CIVIL CASE NO. 99-36804 OF THE RTC, BRANCH 98, QUEZON CITY, FOR CANCELLATION OF THE NOTICE OF LEVY ANNOTATED ON TCT NO. 194226.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT TO ENTERTAIN PETITIONER'S INTERVENTION WOULD NECESSARY (SIC) PRE-EMPT THE ADJUDICATION OF ISSUES IN CIVIL CASE NO. 99-36804 BECAUSE EVIDENCE AND COUNTER-EVIDENCE WILL BE PRODUCED BY THE PARTIES IN THE INJUNCTION SUIT, AND THIS WILL UNDULY DELAY OR PREJUDICE THE ADJUDICATION OF THE RIGHTS OF THE PRINCIPAL PARTIES.

III

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN

RULING THAT THE ALLOWANCE OR DISALLOWANCE OF A MOTION TO INTERVENE IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT, OVERLOOKING THE FACT THAT IN THE INSTANT CASE, THE APPELLATE COURT DID NOT EXERCISE WISELY ITS SOUND DISCRETION WHEN IT DENIED PETITIONER'S MOTION FOR INTERVENTION.

Similarly, the Fifteenth Division of the Court of Appeals, in its decision^[8] dated February 10, 2000, dismissed the petition of the Garcias for violating the rules on forum-shopping. It denied their motion for reconsideration on May 31, 2001.

The Garcias thus filed with this Court a petition for review on certiorari, docketed as G.R. No. 148430, seeking to set aside the February 10, 2000 decision of the Court of Appeals as well as its resolution dated May 31, 2001 denying their motion for reconsideration, raising the following errors:

I

WHETHER OR NOT PETITIONERS WERE GUILTY OF VIOLATING THE RULES ON FORUM-SHOPPING.

II

WHETHER OR NOT PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A WRIT OF INJUNCTION.

Subsequently, G.R. No. 142013 and G.R. No. 148430 were consolidated pursuant to this Court's Resolution dated February 27, 2002.

In the meantime, on August 4, 2001, the Garcias were again served by the sheriff of the Manila RTC with a notice of sale of execution of the disputed property scheduled for August 7, 2001. Because no TRO was issued by this Court, the public auction ordered by the Manila RTC was held as scheduled and the property was awarded to BSC as the highest bidder.

On August 15, 2001, a little too late, this Court^[9] issued the TRO sought by the Garcias in a resolution which partially stated that:

Acting on the Petitioners' Urgent Motion for the Issuance of a temporary restraining order and/or writ of preliminary injunction dated August 6, 2001, praying that public respondents be enjoined from proceeding with the conduct of the public auction sale involving Petitioners' property, registered under TCT No. 194226 of the Registry of Deeds of Quezon City, the Court Resolved to ISSUE the TEMPORARY RESTRAINING ORDER prayed for, effective immediately until further orders from this Court.^[10]

A year after the public auction, on August 6, 2002, the Garcias, fearful of the impending consolidation of title in favor of BSC, filed before this Court an urgent *ex-parte* motion for the issuance of an order maintaining the *status quo ante*. They wanted to prevent the consolidation of the title and possession by BSC until such time as the rights and interests of both sets of petitioners in the two cases before us shall have been determined and finally resolved.

Acting on the said motion, on August 9, 2002, the Court^[11] resolved to grant the motion and directed the parties to maintain the *status quo* as of August 6, 2002.

Going over the merits of the petitions, the Court deems it essential to resolve two pivotal issues: (1) who, between BSC and the Garcias, has a better right to the disputed property, and (2) whether the Garcias violated the rule against forum-shopping.

It should be noted that, at the time of the attachment of the property on July 27, 1998, the spouses Ng were still the registered owners of said property. It should also be observed that the preliminary attachment in favor of petitioner BSC was annotated and recorded in the Registry of Deeds of Quezon City on July 27, 1998 in accordance with the provisions of the Property Registration Decree (PD 1529). This annotation produced all the effects which the law gives to its registration or inscription.^[12]

This Court has always held that attachment is a proceeding *in rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which ripens into a judgment against the res when the order of sale is made. Such a proceeding in effect means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt.^[13] This doctrine was validated by this Court in the more recent case of *Republic vs. Saldares*^[14]:

xxx.

The law does not provide the length of time an attachment lien shall continue after the rendition of the judgment, and it must therefore necessarily continue until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. **Thus, if the property attached is subsequently sold, the purchaser of the attached property acquires it subject to an attachment legally and validly levied thereon.**

xxx.

In the instant case, the records reveal that the levy on attachment covering the subject property was annotated on TCT No. 11387 on **July 27, 1998**. The deed of sale executed on June 29, 1998 in favor of the Garcias was approved by FEBTC only on **August 12, 1998** which was also the date when the sale was registered. From the foregoing, it can be seen that, when the Garcias purchased the property in question, it was already under a duly registered preliminary attachment. In other words, there was already notice to said purchasers (and the whole world) of the impending acquisition by BSC, as the judgment creditor, of a legal lien on the title of the Ng spouses as judgment debtors — in case BSC won its case in the Manila RTC.

The Garcias claim they acquired the subject property by means of a deed of sale with assumption of mortgage dated June 29, 1998, meaning, they purchased the property **ahead** of the inscription of the levy on attachment thereon on July 27, 1998. But, even if consensual, not all contracts of sale became automatically and immediately effective.^[15] In *Ramos vs. Court of Appeals*^[16] we held:

In **sales with assumption of mortgage**, the assumption of mortgage is a condition precedent to the seller's consent and therefore, **without approval of the mortgagee, the sale is not perfected.**